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SUBRAMANYAM SANNASY

v.

SAC II SYED ALWI SYED HAMID & ANOR

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FEDERAL COURT, PUTRAJAYA
ARIFFIN ZAKARIA CJ (MALAYA)
MOHD GHAZALI YUSOFF FCJ
JAMES FOONG FCJ
[CIVIL APPEAL NO: 01(f)-7-2009(J)]

C

12 NOVEMBER 2009

POLICE: *Disciplinary proceedings - Dismissal - Error of law in letter of dismissal stating wrong regulation under Public Officers (Conduct and Discipline) Regulations 1993 - Whether rendered letter of dismissal null and void - Whether erroneous reference to wrong regulation vitiated or invalidated decision to dismiss - Public Officers (Conduct and Discipline) Regulations 1993, regs. 33, 37 & 38*

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The appellant was a lance corporal in the Royal Malaysian Police Force. He was charged in court with an offence under s. 222 of the Penal Code, namely, he was alleged to have falsified documents to release three Indonesians detained from the police lock-up. He was convicted and fined RM1,500 in default three months imprisonment. He paid the fine but did not appeal against the sentence. Consequently, the appellant's head of department, pursuant to reg. 33 of the Public Officers (Conduct and Discipline) Regulations 1993 ('the said Regulations') submitted a report to the disciplinary authority and recommended that the appellant be dismissed. On 20 August 2002, after considering the recommendation of the appellant's head of department and owing to the seriousness of the offence, the disciplinary authority decided to dismiss the appellant. The appellant subsequently instituted this suit seeking a declaration that his dismissal from the police force was wrong in law, null and void and that he was still a police officer. In the High Court, it was agreed by the parties that the claim be dealt with under O. 33 r. 2 and/or O. 14A of the Rules of the High Court 1980. The issue for determination by the trial judge was whether the dismissal of the appellant *vide* the letter of dismissal was null and void. Before the trial judge, the appellant argued that the decision to dismiss the appellant was null and void as the respondents had wrongly invoked reg. 38 of the said regulations when they should have dismissed him under reg. 37 of the same. As such, the appellant contended that there had been

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an error in the process, namely, that there was procedural irregularity in the decision making process leading to the appellant's dismissal. The trial judge dismissed the suit with costs. The appellant's appeal to the Court of Appeal was also dismissed with costs. The questions posed in this appeal were (i) whether an error of law in a letter of dismissal stating a wrong regulation under the Public Officers (Conduct and Discipline) Regulations 1993 rendered the letter of dismissal null and void and of no effect; and (ii) whether mere specification of reg. 37 together with reg. 38(g) (which was undisputedly the wrong regulation) in a letter of dismissal pursuant to disciplinary proceedings initiated under reg. 33 without mention of same in the letter of dismissal rendered the letter of dismissal null and void and of no effect.

Held (dismissing the appeal)
Per Mohd Ghazali Yusoff FCJ delivering the judgment of the court:

(1) The said letter clearly informed the appellant that the disciplinary authority received a report from his head of department stating that the appellant was convicted of an offence under s. 222 of the Penal Code in the Magistrate's Court and the sentence imposed. This would denote that the procedure pursuant to reg. 33 was religiously adhered to by the appellant's head of department. The omission to mention reg. 33 in the said letter could not be said to have occasioned a procedural error affecting the disciplinary proceedings against the appellant. There was no necessity to mention reg. 33 in the said letter as that was the only regulation under which the appellant's head of department could act under the circumstances. (para 14)

(2) The rights of the appellant, under the circumstances of the instant appeal, were not at all affected by the reference made to reg. 38 in the said letter in imposing the punishment of dismissal. The said letter showed that the disciplinary authority acted under reg. 37 in deciding to impose the punishment of dismissal. The appellant was not prejudiced when both regs. 37 and 38 provide for dismissal as a punishment. The reference made to reg. 38 was out of context under the circumstances of the instant appeal but did not affect the validity of the decision of the disciplinary authority in imposing the punishment of dismissal. The erroneous reference to the

A wrong regulation, namely, reg. 38 instead of reg. 37 of the said regulations, did not vitiate or invalidate the decision to dismiss the appellant. On the whole, no injustice had been occasioned. (para 19)

B ***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu adalah lans koperal dengan Polis Diraja Malaysia. Perayu dituduh di mahkamah dengan kesalahan di bawah s. 222 Kanun Keseksaan, iaitu, memalsukan dokumen untuk membebaskan tiga warga Indonesia dari lokap polis. Perayu telah disabitkan dan
C disaman RM1,500 jika mungkir tiga bulan penjara. Perayu membayar saman tersebut tetapi tidak merayu terhadap hukuman. Oleh yang demikian, ketua jabatan perayu, di bawah per. 33 Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('perintah tersebut.') mengemukakan laporan kepada
D pihakberkuasa disiplin dan mencadangkan supaya perayu dibuang kerja. Pada 20 Ogos 2002, selepas memberi pertimbangan cadangan ketua jabatan perayu dan memandangkan kesalahan adalah amat serius, pihakberkuasa disiplin membuat keputusan
E untuk perayu dibuang kerja. Perayu kemudiannya memulakan guaman ini untuk deklarasi pembuangan kerjanya dari pasukan polis adalah salah dari segi undang-undang, tidak sah dan terbatal dan beliau masih pegawai polis. Dalam Mahkamah Tinggi, dipersetujui oleh pihak-pihak yang terlibat bahawa permohonan
F sepatutnya diselesaikan di bawah A. 33 k. 2 dan/atau A. 14 Kaedah-kaedah Mahkamah Tinggi 1980. Isu yang perlu diputuskan oleh hakim bicara adalah sama ada pembuangan kerja perayu melalui surat pembuangan kerja adalah salah dan terbatal. Di hadapan hakim bicara, perayu berhujah keputusan pembuangan
G kerja perayu adalah salah dan terbatal disebabkan responden-responden telah salah menggunapakai anggapan per. 38 perintah tersebut apabila responden-responden sepatutnya membuang perayu di bawah per. 37. Oleh itu, perayu berhujah bahawa timbulnya kesalahan dalam proses, iaitu, wujudnya ketakteraturan
H prosedur dalam proses membuat keputusan yang membawa kepada pembuangan kerja perayu. Hakim bicara membuang guaman dengan kos. Rayuan perayu kepada Mahkamah Rayuan juga dibuang dengan kos. Soalan-soalan yang timbul dalam rayuan ini adalah (i) sama ada wujudnya kesalahan undang-undang di dalam
I surat pembuangan kerja yang menyatakan perintah yang salah di bawah Perintah-Perintah Am Pegawai Awam (Kelakuan dan

Tatatertib) 1993 menyebabkan surat pembuangan kerja salah dan terbatal dan tidak mempunyai efek; (ii) sama ada spesifikasi semata-mata per. 37 bersama-sama dengan per. 38(g) (yang tidak dicabar adalah perintah yang salah) dalam surat pembuangan kerja di bawah prosiding disiplin yang dimulakan di bawah per. 33 tanpa menyatakan yang sama dalam surat pembuangan kerja menyebabkan surat pembuangan kerja salah dan terbatal dan tidak mempunyai efek.

Diputuskan (menolak rayuan)
Oleh Mohd Ghazali Yusoff HMP menyampaikan penghakiman mahkamah:

(1) Surat tersebut dengan jelas memberitahu perayu bahawa pihakberkuasa disiplin menerima laporan dari ketua jabatan perayu yang menyatakan bahawa perayu telah didapati bersalah melakukan kesalahan di bawah s. 222 Kanun Keseksaan di dalam mahkamah majistret dan hukuman diberikan. Ini melambangkan prosedur di bawah per. 33 diikuti dengan ketat oleh ketua jabatan perayu. Ketinggalan sebutan per. 33 di dalam surat tersebut tidak boleh dikatakan penyebab kesalahan prosedur yang mengesankan prosiding disiplin terhadap perayu. Tiada keperluan untuk menyebut per. 33 di dalam surat tersebut kerana hanya di bawah regulasi itulah ketua jabatan perayu boleh bertindak dalam keadaan sedemikian.

(2) Hak-hak perayu, dalam keadaan rayuan ini, tidak terjejas langsung akibat rujukan yang dibuat kepada per. 38 di dalam surat tersebut apabila menjatuhkan hukuman pembuangan kerja. Surat tersebut menunjukkan yang pihakberkuasa disiplin bertindak di bawah per. 37 apabila memutuskan hukuman pembuangan kerja. Tiada prejudis berlaku terhadap perayu apabila kedua-dua per. 37 dan 38 mensyaratkan hukuman pembuangan kerja. Rujukan yang dibuat pada per. 38 berada di luar konteks dalam keadaan rayuan ini tetapi tidak memberi kesan kepada keesahan keputusan pihakberkuasa disiplin dalam menjatuhkan hukuman pembuangan kerja. Rujukan salah ke perintah yang salah, iaitu, per. 38 selain daripada per. 37 perintah tersebut tidak menjejaskan atau mentaksahkan keputusan untuk perayu dibuang kerja. Pada keseluruhannya, tidak ada apa-apa ketidakadilan yang telah dilakukan kepada perayu.

Case(s) referred to:
Isha Beevi v. Tax Recovery Officer [1975] SC 2135 ***(refd)***
Subramanian Sannasy v. SAC II Syed Alwi Syed Hamid & Anor [2004] 1 LNS 325 HC ***(refd)***

Legislation referred to:
Penal Code, s. 222
Public Officers (Conduct and Discipline) Regulations 1993, regs. 33(a), 37(1)(a), 38(g)
Rules of the High Court 1980, O. 14A, O. 33 r. 2

For the appellant - Karpal Singh (Sangeet Kaur Deo with him); M/s Karpal Singh & Co
For the respondents - Nizam Zakaria (Shamsul Bolhassan with him) AG's Chambers

[Editor's note: For the Court of Appeal judgment, please see Subramanyan Sannasy v. Sac II Syed Alwi Syed Hamid & Anor [2009] 6 CLJ 606.]

[Appeal from Court of Appeal; Civil Appeal No: J-01-50-2004]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Ghazali Yusoff FCJ:

[1] The following questions were posed in this appeal, namely:

(1) Whether an error in a letter of dismissal stating a wrong regulation under the Public Officers (Conduct and Discipline) Regulations 1993 renders the letter of dismissal null and void and of no effect; and

(2) Whether mere specification of regulation 37 together with regulation 38(g) (which is undisputedly the wrong regulation) in a letter of dismissal pursuant to disciplinary proceedings initiated under Regulation 33 without mention of same in the letter of dismissal renders the letter of dismissal null and void and of no effect.

Background

[2] The appellant was a lance corporal in the Royal Malaysian Police Force. He was charged in court with an offence under s. 222 of the Penal Code, namely, he was alleged to have falsified documents to release three Indonesians detained from the police

lock-up in Batu Pahat, Johor. He was convicted and fined RM1,500 in default three months imprisonment. He paid the fine but did not appeal against the sentence. A

[3] Consequently, the appellant's head of department, pursuant to reg. 33 of the Public Officers (Conduct and Discipline) Regulations 1993 ("the said Regulations"), submitted a report to the disciplinary authority and recommended that the appellant be dismissed. Regulation 33 of the said Regulations provides that where criminal proceedings against an officer result in his conviction, his head of department shall send a copy of the court's decision and his record of service to the appropriate disciplinary authority that has the power to impose punishment of dismissal or reduction in rank and shall recommend whether the officer should, *inter alia*, be dismissed or reduced in rank "depending on the nature and seriousness of the offence committed in relation to the extent the officer has brought disrepute to the public service". B C D

[4] On 20 August 2002, after considering the recommendation of the appellant's head of department and owing to the seriousness of the offence, the disciplinary authority decided to dismiss the appellant. E

[5] By letter dated 26 August 2002, the disciplinary authority informed the appellant of its decision; that letter ("the said letter"), *inter alia*, reads: F

> 2. Pada menjalankan kuasa-kuasa tatatertib yang telah diwakilkan kepada Lembaga Tatatertib oleh Suruhanjaya Pasukan Polis mengikut PU(B) 441 bertarikh 14.12.2000, saya SAC II Syed Alwi bin Syed Hamid, Pengerusi Lembaga Tatatertib setelah meneliti fakta sabitan bersama-sama Ahli Lembaga Tatatertib serta syor Ketua Polis Daerah Batu Pahat selaras dengan kehendak Peraturan 37, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 dengan ini memutuskan kamu dikenakan hukuman 'Buang Kerja' di atas sabitan Mahkamah tersebut selaras di bawah Peraturan 38 (g), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993. G H
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> 3. Hukuman buang kerja terhadap kamu berkuatkuasa mulai 20.8.2002 iaitu tarikh mesyuarat Lembaga Tatatertib, Kontinjen Johor di bawah Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993. I

A **High Court**

[6] The appellant subsequently instituted this suit seeking a declaration that his dismissal from the police force was wrong in law, null and void and that he is still a police officer. In the High B Court it was agreed by the parties that the claim be dealt with under O. 33 r. 2 and/or O. 14A of the Rules of the High Court 1980. The issue for determination by the trial judge was whether the dismissal of the appellant *vide* the said letter is null and void.

C **[7]** Before the trial judge, learned counsel for the appellant argued that the decision to dismiss the appellant was null and void as the respondents had wrongly invoked reg. 38 of the said Regulations when they should have dismissed him under reg. 37 of the same. As such, counsel contended there has been an error in the process, namely, that there was procedural irregularity in D the decision making process leading to the appellant's dismissal.

[8] At the end of the day, the trial judge dismissed the suit with costs. In his judgment, since reported in the Malayan Law Journal (see *Subramanian Sannasy v. SAC II Syed Alwi Syed Hamid & Anor* E [2004] 1 LNS 325 HC), the trial judge said:

> Upon evaluating the facts herein and the circumstances it is my considered view that there has not been any gross dereliction resulting in procedural unfairness to the plaintiff. The concept of F 'procedural unfairness' is an extension of the principle of 'the right to be heard' and the court will have to look into the full circumstance of the case to ascertain whether the dismissal of the plaintiff is due to the unfair procedure against him. Procedural fairness to my mind much more than merely quoting the wrong section/provision of the law. Procedural unfairness must affect the G rights of the plaintiff in that the right of the plaintiff is affected by the mistake in the legal provision. In short can it be said that the rights of the plaintiff is affected by the quoting of a wrong provision of the 1993 Regulations? The sentence of dismissal is provided in both Regs. 37 and 38, and in the circumstances herein it cannot be denied that before dismissing the plaintiff, the H disciplinary authority had also taken into consideration Reg 37. In the circumstances I cannot but agree with the submission of learned Federal Counsel, Puan Azizah Haji Nawawi that the doctrine of substantive fairness is applicable.

I **[9]** Later on in his judgment, the trial judge said:

> In the light of the principle so established the plaintiff herein has not suffered any injustice over the decision to dismiss him under Reg. 38(g) instead of Reg. 37 of the 1993 Regulations. There is

nothing in the affidavit of the plaintiff to show that he has been prejudiced by the misstatement of the regulations. Paragraph 6 of the 'afidavit jawapan' in encl 7 clearly shows that the recommendation of the Head of Department under Reg. 33 is that the punishment of dismissal be imposed on the plaintiff because of the criminal conviction. Further, the dismissal letter also shows that the disciplinary authority has duly considered the criminal conviction and the recommendations of the head of department before dismissing the plaintiff. Thus it is patently clear that intention of the disciplinary authority as per the recommendation of the Ketua Jabatan is to dismiss the plaintiff because of the criminal conviction.

Since the sentence of dismissal is provided under both provisions, that is, Regs. 37 and 38(g) the end result would have been the same so that it could not be said that there was a real likelihood of him having suffered any prejudice. It follows that the dismissal for the plaintiff under Reg. 38(g) instead of Reg. 37 does not and cannot amount to procedural unfairness and/or procedural irregularity to the plaintiff to entitle him the relief prayed for, bearing in mind that the power of the court to grant a declaratory order is a discretionary power.

[10] In conclusion, the trial judge said:

... Based on the said conviction, his case was referred to the disciplinary authority with a recommendation that he be dismissed from the police force. After considering the conviction and the recommendations of the head of department, the plaintiff was dismissed. The only error, if any, was that the plaintiff was dismissed under Reg. 38(g) of the 1993 Regulations instead of under Reg. 37. But as I have stated above in so doing, there has not been any miscarriage of justice because the powers of dismissal remain with the disciplinary authority.

Having considered the totality of the case, the inevitable result is that the plaintiff will be dismissed and coupled with the fact that the disciplinary authority has the power to dismiss the plaintiff under Reg. 37 the mere mentioning of the wrong provision under which the dismissal was made cannot nullify the said decision.

Court Of Appeal

[11] The appellant's appeal to the Court of Appeal was also dismissed with costs. In delivering the judgment of the court, Heliliah Mohd Yusof, JCA (as she then was) said:

... In the instant appeal before us regulation 33 is an enabling provision where it is incumbent on a head of department to submit a recommendation to the relevant disciplinary authority in

A a situation where an officer has been convicted as a result of criminal proceedings. The contents of the dismissal letter indicate that the Disciplinary Authority acted in furtherance of regulation 37 that is the appropriate provision to impose the punishment of dismissal. It has also been submitted that regulation 33 does not give the disciplinary authority the jurisdiction to convict the officer concerned and that where an officer is convicted under regulation 33 only then regulation 37 applies. It is averred that the first respondent ought to have invoked the provisions of regulation 37. Two observations may be made. Firstly an erroneous interpretation has been rendered to the dismissal letter on behalf of the appellant for as indicated above the dismissal letter has already made a specific reference to regulation 37. Secondly the contention that the reference to regulation 38 in the dismissal letter amounts to the disciplinary authority acting without jurisdiction is without merit. The scope of Regulations 1993 indicates that regulation 33 is only one of the provisions where the disciplinary authority is emplaced in a position to determine what is the appropriate punishment to impose. Implicit in regulation 33 is that conviction and sentence impose by a court of law by itself constitutes a breach of the code of conduct or in effect a misconduct.

Regulations 1993 constitute the corpus of regulations promulgated to regulate the conduct and discipline of those serving in the public services. While regulation 38 uses the term "offence" and the words "... finds an officer guilty of contravening any of the provisions of these Regulations" it is in substance a general description that in the event of the violation of any conduct laid down which amounts to an offence the relevant disciplinary authority under regulation 38 is generally vested with the power to exercise its discretion to make the appropriate determination on the form of punishment to be imposed befitting the circumstances of each contravention of the regulations. The question here is whether in its totality the disciplinary authority in this appeal has considered a matter and arrived at a decision in accordance with the procedure laid down by the Regulations 1993. Our response is that it is in the affirmative. The appellant has also failed in his allegation that the disciplinary authority has not purportedly directed itself to appreciate directory or mandatory provisions found in the 1993 Regulations. In our view the reference to regulation 38 is mere surplus that does not constitute an error in jurisdiction or an absence of exercise of discretion.

The Appeal Before This Court

[12] In canvassing the appeal before this court, learned counsel for the appellant pointed out that reg. 37 in the said letter "does not avert to either limb (a), limb (b) or limb (c)" neither "does it avert to reg. 33(a)". Counsel further pointed out that reg. 37(1)(a) provides for punishment of dismissal if a public officer has committed an offence carrying a criminal conviction. He then argued that a public officer who has committed an offence carrying a criminal conviction cannot be punished under reg. 38(g) and it has to be under reg. 37(1)(a) and no other regulation. He further argued that the said letter "contains regulations included therein which do not apply to the appellant's position" and that the purported action taken against the appellant pursuant to reg. 37 "without specifying the limb therein and mention of reg. 38(g) under which he was dismissed is not on lawful authority".

[13] Based on the above premises, counsel submitted that:

(a) the learned judges of the Court of Appeal were wrong in not concluding that the said letter was fatally flawed having regard to the mention of reg. 38(g) of the said Regulations in it; and

(b) the learned judges of the Court of Appeal misdirected themselves in holding that the reference to reg. 37 of the said Regulations in the said letter did not render it void and inoperative despite no specific reference being made in it that it was reg. 33 read with reg. 37 under which the first respondent had dismissed the appellant from service.

Judgment Of This Court

[14] Only regs. 33, 37 and 38 of the said Regulations are relevant in this appeal. The said letter clearly informed the appellant that the disciplinary authority received a report from his head of department stating that the appellant was convicted of an offence under s. 222 of the Penal Code in the magistrate's court at Batu Pahat and the sentence imposed. This would denote that the procedure pursuant to reg. 33 was religiously adhered to by the appellant's head of department. I cannot fathom how the omission to mention reg. 33 in the said letter can be said to have occasioned a procedural error affecting the disciplinary proceedings

against the appellant. I further cannot see the necessity to mention reg. 33 in the said letter as that was the only regulation under which the appellant's head of department could act under the circumstances.

[15] With regards to dismissal as a punishment, reg. 37(1) of the said Regulations reads:

> Where, after considering the report and the recommendation of the Head of Department forwarded in accordance with regulation 33 or 36, the appropriate Disciplinary Authority is of the opinion:
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> (a) **that the officer should be dismissed or reduced in rank, the Disciplinary Authority shall forthwith impose the appropriate punishment**;
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> (b) that the officer should not be dismissed or reduced in rank but should be imposed with a lesser punishment, the Disciplinary Authority shall impose on the officer such lesser punishment as it deems fit and proper; or
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> (c) that the officer should not be impose with any punishment, the Disciplinary Authority shall so decide.
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> [Emphasis added]

[16] Thus, reg. 37(1) clearly provides that after considering the report and the recommendation of the head of department forwarded in accordance with, *inter alia*, reg. 33, if the disciplinary authority is of the opinion that the officer should be dismissed, it shall forthwith impose that punishment.

In the said letter the disciplinary authority did refer to reg. 37. Dismissal is clearly a punishment that the disciplinary authority can impose, *viz*., under reg. 37(1)(a). I cannot comprehend how the omission in mentioning para. (a) of reg. 37(1) can vitiate the said letter. Other than a reduction in rank as a punishment, dismissal as a punishment is only provided for in para. (a) of reg. 37(1); para. (b) refer to the imposition of a lesser punishment other than dismissal or a reduction in rank and para. (c) empower the disciplinary authority not to impose any punishment should it so decide. Consequently, I cannot fathom why the reference made in the said letter to reg. 38(g) of the said Regulations, which in my view would be out of context under the circumstances, can be said to be tantamount to procedural unfairness. Regulation 38(g) reads:

> The appropriate Disciplinary Authority may, if it finds an officer guilty of contravening any of the provisions of these Regulations, and after having regard to the seriousness of the offence, impose upon the officer any one or any combination of two or more of the following punishments:
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> (g) dismissal.

I would agree with the views expressed by Heliliah Mohd Yusof, JCA in her judgment with regards to reg. 38, namely, that "the reference to reg. 38 is mere surplus that does not constitute an error in jurisdiction or an absence of exercise of discretion".

[17] In *Isha Beevi v. Tax Recovery Officer* [1975] SC 2135, several objections were canvassed before the Kerala High Court one of which was that a wrong section of a provision of law was cited in an attachment order. That objection was overulled by the learned judge who relied upon "the well established proposition that where the power to proceed is actually there, the mere reference to a wrong section for authority to act, will not vitiate the action taken". In delivering the judgment of the Supreme Court, Beg J said (at p. 2137):

> It is not enough if a wrong section of the provision of law is cited in a notice or order if the power to proceed is actually there under another provision.

[18] The first question posed in the instant appeal presupposes that there was an error in the said letter, *viz*., that the reference made to reg. 38 of the said Regulations was an error and hence would render the said letter null and void. The second question posed is whether mere specification to reg. 37 in the said letter together with reg. 38(g) "which is indisputedly the wrong regulation" without mentioning reg. 33 would render the said letter null and void and of no effect.

[19] I am of the view that the rights of the appellant, under the circumstances of the instant appeal, were not at all affected by the reference made to reg. 38 in the said letter in imposing the punishment of dismissal. The said letter showed that the disciplinary authority acted under reg. 37 in deciding to impose the punishment of dismissal. I cannot see how the appellant can be said to be prejudiced when both regs. 37 and 38 provide for dismissal as a punishment. The reference made to reg. 38 was out of context under the circumstances of the instant appeal but does

A not affect the validity of the decision of the disciplinary authority in imposing the punishment of dismissal. In my judgment the erroneous reference to the wrong regulation, namely, reg. 38 instead of reg. 37 of the said regulations does not vitiate or invalidate the decision to dismiss the appellant. On the whole I am
B of the view that no injustice has been occasioned.

[20] Based upon the above premisses, I answer both questions posed in the instant appeal in the negative. The appeal is hereby dismissed with costs. I would also make an order that the deposit
C be paid to the respondents on account of taxed costs.

[21] My learned brothers Arifin Zakaria, CJM and James Foong Cheng Yuen, FCJ have seen this judgment in draft and concurred with it.

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